



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 17944407

Date: AUG. 24, 2021

**Appeal of Nebraska Service Center Decision**

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a maintenance, assembly, and renovation engineer, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. On appeal, the Petitioner submits additional documentation and a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will

substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).<sup>1</sup> *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion<sup>2</sup>, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national’s contributions; and whether the national interest in the foreign national’s contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s)

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<sup>1</sup> In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

<sup>2</sup> See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>3</sup>

## II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

Regarding his claim of eligibility under *Dhanasar*'s first prong, the Petitioner indicated that his proposed endeavor in the United States is to offer, through his [REDACTED] "business, maintenance services to residential and industrial sectors, applying my engineering and maintenance expertise that I have gained through my career" and "[h]aving worked both with light industries such as [REDACTED] and heavy industries such as cement production, metalworks and aluminum treatment and production have exposed me to a wide array of engineering and maintenance challenges, which allow his company to serve a diverse clientele."<sup>4</sup> In addition, the Petitioner stated that he plans to provide "engineering services to cement, mining, and aluminum extrusion factories" and "support services to organizations that restructure cities in Florida."<sup>5</sup> He also explained that he will also contribute to industry revenue growth and "expects to pay \$466,782 in tax payments to the US over the next 5 years."<sup>6</sup>

The record includes articles about a shortage of STEM professionals and highly accomplished engineers in the United States. In addition, the Petitioner provided industry reports and articles indicating the Florida engineering services industry is experiencing a shortage of qualified engineering professionals and Florida has a need for maintenance engineers to keep up with the demands of the construction industry. The record therefore supports the Director's determination that the Petitioner's proposed work as a maintenance, assembly, and renovation engineer has substantial merit.

In determining national importance, the relevant question is not the importance of the field or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake."<sup>7</sup> See *Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within

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<sup>3</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

<sup>4</sup> At the time of filing, the Petitioner was the co-owner of [REDACTED] which was incorporated in [REDACTED] 2018 in Florida.

<sup>5</sup> In response to the Director's request for evidence (RFE), the Petitioner presented a business plan for [REDACTED] [REDACTED] dated September 2020. Regarding future staffing, his business plan anticipates that [REDACTED] will employ seven employees in 2020 and 14 employees in 2021 through 2024. In addition, the plan offers revenue projections of \$350,000 in 2020, \$630,000 in 2021, \$693,000 in 2022, \$762,300 in 2023, and \$800,415 in 2024. The Petitioner, however, does not explain how these staffing and revenue forecasts were calculated.

<sup>6</sup> The business plan submitted by the Petitioner anticipates employing 14 employees beginning in 2021 and anticipates total payroll expenses of \$230,000 in 2020, \$439,500 in 2021, \$461,475 in 2022, \$484,549 in 2023, and \$508,776 in 2024. Again, the Petitioner does not explain how these staffing and expense forecasts were calculated.

a particular field.” *Id.* We also stated that “[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance.” *Id.* at 890.

In his appellate brief, the Petitioner points to his background, education, work experience, and specialized training in his field. The Petitioner’s knowledge, skills, and experience in his field relate to the second prong of the *Dhanasar* framework, which “shifts the focus from the proposed endeavor to the foreign national.” *Id.* at 890.<sup>8</sup> The issue here is whether the specific endeavor that he proposes to undertake has national importance under *Dhanasar*’s first prong. To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of his work.

On appeal, the Petitioner argues the Director disregarded the Petitioner’s professional declaration as well as a letter from [redacted] a reliability engineer at [redacted] that were allegedly submitted in response to the Director’s RFE and these letters should be taken into consideration regarding the national importance of the submitted business plan. However, there appear to be unresolved inconsistencies with these statements. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (noting that “it is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence” and that “[a]ttempts to explain or reconcile the conflicting accounts, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice”).

For example, the Petitioner’s professional declaration is dated April 2, 2019, and claims the Petitioner was currently working with [redacted] a Florida [redacted] company, providing automation and environmentally friendly practices regarding industrial [redacted] disposal. However, the letter from [redacted] is dated July 31, 2020, and claims [redacted] was working with [redacted] from “July 31, 2020, up to the present date.” Additionally, the letter from [redacted] is not probative evidence as it indicates the Petitioner was contracted to work for [redacted] the same day [redacted] wrote his letter but does not explain how, in that period of time, the Petitioner was able to increase [redacted] sales “exponentially” or reduce factory outages “by 50%” as mentioned in [redacted]’s letter. There is no competent objective evidence in the record before us that reconcile these inconsistencies. *See Ho*, 19 I&N at 591-592.<sup>9</sup>

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of his work. Although the Petitioner’s statements reflect his intention to expand his business operations and to offer engineering

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<sup>8</sup> To establish that it would be in the national interest to waive the job offer requirement, a petitioner must go beyond showing her expertise in a particular field. The regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered” in a given area of endeavor. By statute, individuals of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given petitioner seeks classification as an individual of exceptional ability, or as a member of the professions holding an advanced degree, that individual cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in her field of expertise. *See Dhanasar*, 26 I&N Dec. at 886 n.3.

<sup>9</sup> We also note that neither the Petitioner’s professional declaration nor the letter from [redacted] appear in the record of the original RFE response, submitted on September 18, 2020, and neither documents were cited in the Petitioner’s RFE response letter or in the submitted business plan. These documents appear to have been submitted on appeal as a copy of the previous RFE response.

services to future clients, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In *Dhanasar* we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we conclude the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond his company, partnerships, and clientele to impact his field or the industry more broadly at a level commensurate with national importance.

The Petitioner asserts that his proposed endeavor "will create employment for qualified workers in the Engineering Services Industry" and is "well positioned to contribute to the development of the engineering sector in the U.S. through an offer of services that addressed the current needs of numerous cement, mining, and aluminum factories, as well as restructuring companies." The Petitioner indicates he "recognizes the potential of the Engineering Services Industry in the U.S. and has therefore created lasting relationships with business partners and clients" and that he will "provide professional expertise that will help bridge the gap between the projected demand and supply for engineering services in the U.S. market." However, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, he has not shown that his projects' future staffing levels and business activity stand to provide substantial economic benefits in Florida or the United States. While the sales forecasts for [REDACTED] indicate that these projects have growth potential, they do not demonstrate that benefits to the regional or national economy resulting from the Petitioner's undertakings would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890.

In addition, although the Petitioner asserts that [REDACTED] will employ U.S. workers, he has not offered sufficient evidence that the area where they will operate is economically depressed, that he would employ a significant population of workers in that area, or that his endeavor would offer the region or its population a substantial economic benefit through employment levels or business activity. Nor has the Petitioner demonstrated that any increases in employment or income attributable to [REDACTED] [REDACTED]'s operations stand to substantially affect economic activity or tax revenue in Florida or nationally. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

### III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

**ORDER:** The appeal is dismissed.